IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Case No. Appeal from order No. 181 of 2002

National Insurance Company Ltd. ---------- Appellant.

Vs.

Smt. Chandra Bisht & others ---------- Respondents.

Date of decision: 13-09-04

For the approval of:

Hon'ble Mr. Justice P.C. Verma.

Hon'ble Mr. Justice B.S. Verma.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? ( )

Court No.2

In the High Court of Uttaranchal, at Nainital.

(1) Appeal from Order No. 181/2002.
National Insurance Company Ltd. ...Appellant
Versus
Smt. Chandra Bisht and three Ors. ...Respondents.

(2) Appeal from Order No. 180/2002.
National Insurance Company Ltd. ...Appellant
Versus
Smt.Basanti Tewari and three Ors. ...Respondents.

(3) Appeal from Order No. 182/2002.
National Insurance Company Ltd. ...Appellant
Versus
Smt. Tara Devi & four Ors. ...Respondents.

(4) Appeal from Order No. 183/2002.
National Insurance Company Ltd. ...Appellant
Versus
Smt. Pushpa Joshi & three Ors. ...Respondents.

(5) Appeal from Order No. 184/2002.
National Insurance Company Ltd. ...Appellant
Versus
Smt. Geeta Bhatt & three Ors. ...Respondents.

(6) Appeal from Order No. 185/2002.
National Insurance Company Ltd. ...Appellant
Versus
Smt. Tulsi Juyal & four Ors. ...Respondents.

(7) Appeal from Order No. 186/2002.
National Insurance Company Ltd. ...Appellant
Versus
Smt. Laxmi Devi Bhatt & four Ors. ...Respondents.

(8) Appeal from Order No. 187/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Manju Rawat & four Ors. ...Respondents.

(9) Appeal from Order No. 220/2002.

National Insurance Company Ltd. ...Appellant

Versus

Sri Dinesh Chandra Pant & two Ors. ...Respondents.

(10) Appeal from Order No. 221/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Tulsi Juyal & four Ors. ...Respondents.

(11) Appeal from Order No. 222/2002.

National Insurance Company Ltd. ...Appellant

Versus

Sri Narayan Dutt and another. ...Respondents.

(12) Appeal from Order No. 223/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Veena Devi & another ...Respondents.

(13) Appeal from Order No. 224/2002.

National Insurance Company Ltd. ...Appellant

Versus

Sri Dhan Singh & four Ors. ...Respondents.

(14) Appeal from Order No. 226/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Chandra Bisht & three Ors. ...Respondents.

(15) Appeal from Order No. 229/2002.

National Insurance Company Ltd. ...Appellant

Versus

Sri Man Singh Patwal & three Ors. ...Respondents.

(16) Appeal from Order No. 231/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Laxmi Devi Bhatt & Ors. ...Respondents.

(17) Appeal from Order No. 140/2002.

National Insurance Company Ltd. ...Appellant

Versus

Abdul Wahid & five Ors. ...Respondents.

(18) Appeal from Order No. 141/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Naseem Begum & four Ors. ...Respondents.

(19) Appeal from Order No. 142/2002.

National Insurance Company Ltd. ...Appellant

Versus

Abdul Wahid & five Ors. ...Respondents.

(20) Appeal from Order No. 143/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Geeta Devi & six Ors. ...Respondents.

(21) Appeal from Order No. 144/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Phoolwati & four Ors. ...Respondents.

(22) Appeal from Order No. 145/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Idrish Begum & eight Ors. ...Respondents.

(23)Writ Petition No. 1153 (M/S)/2002.

National Insurance Company Ltd. ...petitioner

Versus

Motor Accident Claims Tribunal
Nainital & 4 Ors. ...Respondents.

(24) Appeal from Order No. 322/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Bhagwati Pd.Pandey & two Ors. ...Respondents.

(25) Appeal from Order No. 323/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Pushpa Devi Manral & two Ors. ...Respondents.

(26) Appeal from Order No. 324/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Saraswati Devi & seven ors. ...Respondents.

(27) Appeal from Order No. 325/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt.Deepa Tewari & three Ors. ...Respondents.

(28) Appeal from Order No. 326/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Asha Karakoti and five Ors. ...Respondents.

(29) Appeal from Order No. 327/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Rekha Devi & two Ors. ...Respondents.

(30) Appeal from Order No. 328/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt.Bhagirathi Devi & Anr. ...Respondents.

(31) Appeal from Order No. 329/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Prema Manral & three Ors. ...Respondents.

(32) Appeal from Order No. 232/2002.

National Insurance Company Ltd. ...Appellant

Versus

Sri Kamlesh and another ...Respondents.

(33) Appeal from Order No. 244/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Vimla Devi & five Ors. ...Respondents.

(34) Appeal from Order No. 245/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Shanti Devi & four Ors. ...Respondents.

(35) Appeal from Order No. 247/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Joguli Devi & two Ors. ...Respondents.

(36) Appeal from Order No. 230/2002.

National Insurance Company Ltd. ...Appellant

Versus

Sri Dan Singh and two Ors. ...Respondents.

(37) Appeal from Order No. 246/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Paruli Devi and four Ors. ...Respondents.

(38) Appeal from Order No. 336/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Pushpa Devi & two Ors. ...Respondents.

(39) Appeal from Order No. 337/2002.

National Insurance Company Ltd. ...Appellant

Versus

Sri Harish Singh & two Ors. ...Respondents.

(40) Appeal from Order No. 338/2002.

National Insurance Company Ltd. ...Appellant

Versus

Sri Kundan Singh & two Ors. ...Respondents.

(41) Appeal from Order No. 339/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Pushpa Devi & three Ors. ...Respondents.

(42) Appeal from Order No. 340/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Indra Devi & two Ors. ...Respondents.

(43) Appeal from Order No. 341/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Pushpa Devi & two Ors. ...Respondents.

(44) Appeal from Order No. 342/2002.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Shyama Devi & Ors. ...Respondents.

(45) Appeal from Order No. 436/2003.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Laxmi Bora & another. ...Respondents.

(46) Appeal from Order No. 438/2003.

National Insurance Company Ltd. ...Appellant

Versus

Smt. Aarti Rawat & four Ors. ...Respondents.

(47) Appeal from Order No. 500/2003.

National Insurance Company Ltd. ...Appellant

Versus

Sri Shiv Singh & two Ors. ...Respondents.

(48) Appeal from Order No. 495/2003.

Smt. Laxmi Bora ...Appellant

Versus

M/s Kumaon Aadarsh Motor
Yatayat Sahkari Samiti Ranikhet Road,
Ramnagar, District-Nainital Ors. ...Respondents.

(49) Appeal from Order No. 498/2003.

Shiv Singh & another ...Appellant

Versus

M/s Kumaon Aadarsh Motor
Yatayat Sahkari Samiti Ranikhet Road,
Ramnagar, District-Nainital & Anr. ...Respondents.

(50) Appeal from Order No. 502/2003.

Smt. Aarti Rawat & two Ors. ...Appellant

Versus

M/s Kumaon Aadarsh Motor
Yatayat Sahkari Samiti Ranikhet Road,
Ramnagar, District-Nainital Anr. ...Respondents.

For the appellant- Sri Lalit Belwal & Sri D.S. Patni Advocates.
For the respondents- Sri P.C. Maulekhi, Sri Dharamveer, Sri B.C. Pandey, Sri Z.U. Siddiqui, Sri Naresh Pant, Sri Dinesh Chauhan, Sri N.P.Shah Sri Hira Singh, Sri R.Mohan, Sri R.S.Kutiyal Sri R. S. Sammal, Sri P.C. Bisht, Sri B.S.Rawat Sri V. S. Dangwal and Sri R.S.Latwal Advocates.

Date: 13th Sept., 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

All these appeals are being heard together and decided by one and common order as the facts and question involved are common and also the vehicle involved in the accident and the date of accident is same.

2- The Opp.party/appellant- National Insurance company has preferred the appeals (serial Nos. 1 to 16) against the one and common judgment dated 18.06.2002 passed by Motor Accident Claims Tribunal/II Fast Track Court, Nainital in the Motor Accident Claim Petitions (leading case No. 162 of 2000).

Appeals (serial Nos. 17 to 22) have been preferred against the one and common judgment dated 23.3.2002 passed by Motor Accident Claims Tribunal/Addl.District Judge, Kashipur, District Udham Singh Nagar in Motor Accident Claim Petitions (leading case No. 133 of 2000.).

A writ petition (serial No. 23) and appeals (serial Nos.24 to 31) have been preferred against the one and common judgment dated 27.8.2002 passed by the Motor Accident Claims Tribunal/II Fast Track Court, Nainital in Motor Accident Claim Petitions (leading case No. 173 of 2000).

Appeals (serial Nos. 32 to 35) have been preferred against the one and common judgment dated 03.7.2002 passed by Motor Accident Claims Tribunal/Addl.District Judge, Nainital in Claim Petitions (leading case No. 235 of 2000.).

Appeals Nos. 230 of 2002 and 246 of 2002 have been preferred against the separate judgment and award both dated 3.7.2002 passed by the Motor Accident Claims Tribunal/Addl.District Judge, Nainital in Claim Petition Nos. 236 of 2000 and 237 of 2000 respectively.

Appeals (serial Nos.38 to 44) have been preferred against the separate judgment and awards dated 24.8.2002 passed by the Motor Accident Claims Tribunal/District Judge, Almora in Claim Petition Nos. 29/2000, 30/2001, 39/2000, 28/2000, 30/2000, 27/2000 & 32/2000 respectively.

Appeals (serial Nos.45 to 47) have been preferred against the one and common judgment dated 19.9.2003 passed by the Motor Accident Claims Tribunal/District Judge, Nainital in Claim Petitions (leading case No.200 of 2000).

3- All these cases under appeals have been decreed by the Tribunals alongwith interest at the rate of 9% per annum against which the Opp.party-National Insurance Company has come up in appeals.

In Claim Petition Nos. 200 of 2000, 5 of 2000 and 197 of 2000 against which the claimants have preferred appeal Nos. 502 of 2003, 498 of 2003 and 495 of 2003 respectively the Motor Accident Claims Tribunal, Nainital (*hereinafter referred to as the Tribunal*) has not granted interest on the amount of compensation. The claimants have preferred these appeals for grant of interest on the amount of award.

4- Brief facts giving rise to these appeals are that on 27.4.2000 at about 6.30 p.m. vehicle bus No. UP 02A-8221 was returning from Village-Sakhital, District-Almora to Ram Nagar (District-Nainital) carrying a marriage party. When the said bus reached near Village Bisoli, within the Patwari circle-Tukura, Tehsil-Bhikiyasain, it fell into a

ravine (Khud) due to rash and negligent driving by its driver in which several persons of the marriage party died and several persons sustained grievous injuries. The Opp.party –Kumaon Adarsh Motor Yatayat Sahkari Samiti Ltd. is the owner of the said bus and it was insured with Opp.party – National Insurance Company Ltd. The injured who sustained injuries and the dependents of the deceased who died in this accident filed the above claim petitions before the Tribunal in different districts for compensation which were allowed.

5- The opposite parties except the driver of the vehicle in question contested the claim petitions before the Tribunals by filing their separate written statements. Opp.party Kumaon Adarsh Motor Yatatyat Sahkari Samiti Ltd. admitted the ownership of bus in question No. U.P.02-A-8221 and also did not deny the accident on the aforesaid date, time and place. It was alleged that the said bus was being driven by its driver cautiously by following traffic rules and accident occurred due to mechanical fault. The Opp.party-National Insurance Company alleged in its written statement that the vehicle was being plied violating the terms and conditions of the Insurance Policy. It was also pleaded that the alleged bus was carrying passengers beyond the prescribed limit. The Tribunals, on the pleadings of the parties, framed necessary issues in each case and allowed the petitions for grant of compensation. Feeling aggrieved the National Insurance Company has come up in these appeals and in some cases the claimants/respondents against the rejection of rate of interest on the amount of award, preferred the appeals accordingly.

6- The learned counsel for the appellant – National Insurance Company challenged the judgments under appeals on the ground that there was a breach of policy inasmuch as the motor vehicle was insured as passenger vehicle and upto 41 passengers, while from the evidence it stands established that there were 45 death cases and 15 injured as per magisterial inquiry report. The learned counsel for the appellant submitted that the overloading is a breach of policy as provided in Sub Rule (v) of Rule 67 of the Uttar Pradesh Motor Vehicles Rules, 1998 which reads as under:-

> "that the maximum number of persons or maximum weight of luggage that may be carried in the vehicle covered by the permit shall not exceed as given in the certificate of registration."

7- Since there was breach of policy, therefore this ground was available to the appellant under sub clause (c) of sub clause (i) of clause (a) of sub section (2) of Section 149 of the Motor Vehicle Act, 1988 (***in short the Act***). The learned counsel for the appellant placed reliance to the provision of Sec. 66 of the Act and submitted that on account of this breach of policy the owner of the vehicle was prohibited to use or permit the use of vehicle as transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority. In view of this prohibition created by Sec. 66 of the Act the appellant could not use the motor vehicle even for the purpose for which the permit was granted. Therefore, the vehicle was not being used for the purpose for which the permit was granted. Thus, the ground under sub clause (c) of sub clause (i) of clause (a) of sub-section (2) of Section

149 of the Act is available to challenge the liability fastened upon the appellant beyond the passengers insured under the permit.

8- We think it appropriate to quote the definition of **"permit"** given in the Motor Vehicles Act, 1988 which reads as under:-

> "permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle."

9- It is clear from the definition that the permit is issued by the authority prescribed authorising the use of a motor vehicle as a transport vehicle. In the instant case the vehicle in question was a passenger vehicle.

10- In order to appreciate the aforesaid submissions we think it also appropriate to quote sub section (2) of Sec. 149 of the Act, which reads as under:-

> " No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-
>
> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-
>
> (i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

11- From perusal of above, it is clear that the Section starts from the word, **'no'** which creates a prohibition for raising the grounds of appeal by the Insurance Company, except on the grounds mentioned in clause (a) or clause (b) of sub-section (2). Sub clause (c) of sub clause (i) of clause (a) of sub-section (2) of Sec. 149 specifically provides for the purpose not allowed by the permit under which the vehicle is used. A motor vehicle is used only for two purposes as comes out from Sec. 66 of the Act itself; one for carrying the passengers another for carrying the goods. The ground under the provision of sub clause (c) aforesaid shall be

available to the insurer only in case, if goods are being carried by the passenger vehicle or passengers are being carried by a goods vehicle beyond the number mentioned in the permit. Then the use will be for the purpose not allowed by the permit. The breach of all the conditions of permit is not the ground available to the insurer to file an appeal. Only those conditions which the enumerated under clause (a) of sub section (2) aforesaid are only the grounds to be raised by the insurer as grounds of appeal.

12- The Hon'ble Supreme Court in case of ***B.V. Nagaraju versus Oriental Insurance Co Ltd., Divisional Officer, Hassan, reported in (1996) 4 Supreme Court Cases, Page 647,*** while considering the liability of Insurance Company-insurer for payment of compensation to the passengers which were travelling in a goods vehicle beyond the number of passengers held that it was not a fundamental breach. Therefore, the Insurance Company was held liable for payment of compensation. In the present case admittedly, the permit of the vehicle was granted for use of carrying the passengers and accident took place when the vehicle was carrying the passengers. Therefore, this ground is not available to the appellant under sub clause (c) of sub clause (i) of clause (a) of sub-section (2) of Section 149 of the Act.

13- Learned counsel for the appellant submitted that the facts of the case of **B.V.Nagaraju Vs. Oriental Insurance Company Ltd. (supra)** are not applicable in the facts and circumstances of the present case as that was a case where breach was not so fundamental but here in the present case the breach is fundamental. The argument advanced by the learned counsel for the appellant is

misconceived. We have quoted above the law laid down by the Apex Court in **B.V.Nagaraju's** case (supra). In that case the goods vehicle was carrying the passengers beyond the permitted limit. Here in the present case, the permit of the vehicle was for carrying the passengers. Therefore, no ground is available to the appellant under sub clause (c) of sub clause (i) of clause (a) of sub-section (2) of Sec. 149 of the Act.

14- The learned counsel for the appellant further submitted that under clause (b) of Section 170 of the Motor Vehicles Act, 1988 all the grounds are available to the appellant in appeal, which provide the right to contest the claim on any of the grounds the claim has been made. Therefore, the appellant can press this appeal on the grounds on which the insured could press the appeal. The learned counsel for the appellant relied on ***Para-9*** of the judgment of Division Bench of this Court in ***Appeal No. 295 of 2002, United India Insurance Company Ltd. Versus Smt. Gurjeet Kaur Deol and others, decided on 23rd Sept., 2003*** which is quoted as under:-

> "The only issue is whether Appeal under section 173 of Motor Vehicles Act filed by Insurance Company is non-maintainable. We find merit in the preliminary objection raised on behalf of the claimants. In the above judgment of the Supreme Court, it has been held that the Insurance Company can defend the claim petition only on the ground of breach of conditions of policy or on the ground that the policy is void for reasons given in section 149(2) of the Act. That the Insurance Company cannot avoid its liability on any grounds except those mentioned in section 149(2) of the Act. That the insurer has no right to file an appeal to challenge the quantum of compensation or the finding of the Tribunal as regards negligence or contributory negligence of the offending vehicle except in case where section 170 is applicable. That, in

cases where in the course of inquiry, the Tribual is satisfied that there is collusion between the claimant and the person against whom the claim has been made or if the Tribunal is satisfied in the course of inquiry that the person against whom the claim has been made has failed to contest the claim, the Tribunal may for reasons to be recorded in writing implead the insurer and in that case it is permissible for the insurer to contest the claim on the grounds which are available to the insured. Therefore, where conditions precedent to section 170 are satisfied and the award is adverse to the insurer, the insurer has a right to file an appeal challenging the quantum of compensation or negligence or contributory negligence on the part of the offending vehicle."

15- A perusal of the aforesaid judgment itself shows that where the conditions precedent to Section 170 of the Act are satisfied and the award is adverse to the insurer, the insurer has right to file an appeal challenging the quantum of compensation or negligence or contributory negligence on the part of the offending vehicle. As we have factually noticed in this appeal that the conditions precedent to Sec. 170 are not available to the appellant in view of the fact that the appellant was already as party. They were contesting the claim petitions. The application under Sec. 170 of the Act for permission has to be bona fide and filed at the stage when the insured was required to lead his evidence. The Apex Court, while considering this issue has categorically held in **Para-31** of the case **National Insurance Co. Ltd. Chandigarh versus Nicolletta Rohtagi** reported in **(2002) 7 Supreme Court Cases, page 456** that,

"We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, Insurance Company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not,

implead the Insurance Company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be *bona fide* and filed at the stage where the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer *res integra* that fraud vitiates the entire proceedings and in such cases it is open to an insurer to apply to the Tribunal for rectification of award."

16- The learned counsel for the appellant further submitted that since the Tribunal has held that all the grounds are available to the appellant while rejecting the application under Sec. 170 of the Motor Vehicles Act, it is open for the appellant to press these appeals on all grounds available to the insured. The argument is based on the finding of the Tribunal which is contrary to the law laid down by the Apex Court in the case **National insurance Co. Ltd. Chandigarh versus Nicolletta Rohtagi** (supra). Section 170 of the Motor Vehicles Act provides certain grounds available to the insurer only in case of collusion between the claimant and owner of the vehicle in question or where the person against whom claim has been preferred has failed to contest the claim. The Apex Court has specifically said that in case of rejection of an application under Section 170, the insurer can file an appeal against the said rejection order. As held by us that breach of condition No.(v) framed under Rule 67 of the Uttar Pradesh Motor Vehicles Rules, 1998 is not a breach

of condition on the basis of which the insurer can file an appeal under sub clause (c) of sub clause (i) of clause (a) of sub section (2) of Sec. 149 of the Act. Therefore, ground of challenge is misconceived and is hereby rejected.

17- The learned counsel for the appellant next contended that in Appeal Nos. 180/2002 to 187/2002, 220/2002 to 224/2002, 226/2002, 229/2002 to 231/2002 applications under Sec. 170 of the Act were filed but no orders were passed. In appeal Nos. 336/2002 to 342/2002 the applications under Sec. 170 of the Act were filed but were rejected and in Appeal Nos. 140/2002 to 145/2002, 436/2003, 438/2003, 500/2003 the said applications were not filed. It is admitted by the learned counsel for the appellant that in the cases in which the application under Section 170 of the Act has been moved it were moved some times in the year 2002 while the evidence of the claimants and insured and of the insurer were closed in the year 2001. Therefore, the applications under Sec. 170 of the Act were not liable to be entertained in view of the law laid down by the Apex Court in the case **National Insurance Co. Ltd. Chandigarh versus Nicolletta Rohtagi** (supra), wherein their Lordships have held that such application for permission has to be *bona fide* and filed at the stage when insured in required to lead his evidence. Filing of the application under Sec. 170 of the Act at such belated stage creates a doubt on the application itself and since the applications were filed when the dates in the cases were fixed for argument, therefore the Tribunal rightly rejected the applications and in other cases the appellant itself did not press the applications. Therefore, at this appellate stage, appellant has no right to contest these appeals on all the grounds, which are available to the insured.

18- Therefore, the contention of the learned counsel for the appellant has no force and is rejected.

19- The learned counsel for the appellant/claimants in Appeal Nos. 495/2003, 498/2003 and 502/2003 contended that the learned Tribunal has erred in not awarding the interest on the amount of compensation in Claim Petition Nos. 197/2000, 5 of 2000 and 200 of 2000 against which the claimants have come up in the aforesaid appeals respectively. In the interest of justice, we think it appropriate, if these claim petitions would have been decreed alongwith interest.

20- Learned counsel for the appellant-Insurance Company also submitted that in some claim petitions the Tribunal at the very higher rate has fixed the interest on the amount awarded. In view of the aforesaid contentions of the learned counsel for the claimant/appellants and Opp.party/appellant-Insurance Company we provide that in all the claim petitions under appeals the rate of interest on the amount awarded as compensation will be 6% (six per cent) per annum.

21- We, therefore, modify the rate of interest on the amount awarded as compensation in all these cases accordingly.

22- In view of above, all the appeals filed by the appellant-Insurance Company fail and are dismissed. The writ petition is also dismissed. No order as to costs. Amount, if deposited in these cases by the appellant-Insurance Company in this Court, shall be remitted to the Tribunal concerned by the registry within two months from today.

22- The appeal Nos. 495/2003, 498/2003 and 502/2003 filed by the claimants are allowed. The claimants/appellants shall be paid interest at the rate of 6% (six per cent) per annum on the amount of compensation awarded from the dates of filing of claim petitions till the date of payment.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P. Singh

A.O. No. 341 of 2002

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

For order, see our order of date passed on the separate sheet in A.O. No.181/2002.

(B.S.V, J.) **(P.C.V., J.)**

13-09-2004
P.Singh